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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(El Dorado)

THE PEOPLE,

Plaintiff and Respondent,

v.

MELISSA DELANNE HASLEY,

Defendant and Appellant.

C083401

(Super. Ct. No. P14CRF0728)

Defendant Melissa Delanne Hasley appeals from the trial court's denial of her Penal Code section 1170.18¹ petition on the grounds that it was filed in the wrong county. She contends on appeal that the trial court erred, as her petition was properly filed in the county to which her case was transferred pursuant to section 1203.09 rather than the county where she was convicted. Relying on a California Supreme Court case decided after the conclusion of briefing, we shall affirm.

¹ Undesignated statutory references are to the Penal Code.

BACKGROUND

The facts of defendant's crime, as taken from the factual basis of her plea, are as follows:

"On or about June 13, 2010, in Amador County, the defendant Miss Hasley was in possession of items she knew or reasonably should have known were stolen, specifically, several wrenches and tools that did not belong to her."

On June 24, 2010, defendant pleaded guilty in Amador County Superior Court to receiving stolen property (§ 496, subd. (a)) and providing a false identity to a peace officer (§ 148.9, subd. (a)). On August 5, 2010, the court suspended imposition of sentence and placed defendant on five years' formal probation. Defendant's case was transferred to El Dorado County pursuant to section 1203.9 on October 10, 2014. The El Dorado County Superior Court accepted the transfer and renumbered her case on November 24, 2014.

A petition for revocation was filed by the probation office on April 13, 2015. Defendant filed a section 1170.18 resentencing petition with the El Dorado County Superior Court on December 15, 2015, alleging the value of property in question did not exceed \$950. The People filed an opposition on December 22, 2015, arguing that granting the petition would impermissibly void the plea agreement.

At the August 22, 2016 hearing on the resentencing petition, the prosecutor claimed the petition had to be filed in Amador County instead of El Dorado County. The trial court continued the matter to permit defense counsel to address the contention. Following briefing on the matter by the parties, the trial court denied the petition on October 17, 2016, ruling that given the conflicting appellate opinions on the matter, it would be safer to direct defendant to file her resentencing petition in Amador County.

DISCUSSION

"Proposition 47 makes certain drug- and theft-related offenses misdemeanors, unless the offenses were committed by certain ineligible defendants. These offenses had

previously been designated as either felonies or wobblers (crimes that can be punished as either felonies or misdemeanors).” (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1091.) A person serving a felony sentence for a crime that would now be a misdemeanor under Proposition 47 can “petition for resentencing under the new, more lenient, provisions.” (*People v. Gonzales* (2017) 2 Cal.5th 858, 863.)

Section 1170.18 establishes the procedure for obtaining resentencing. “A person who, on November 5, 2014, was serving a sentence for a conviction, whether by trial or plea, of a felony or felonies who would have been guilty of a misdemeanor under the act that added this section (‘this act’) had this act been in effect at the time of the offense may petition for a recall of sentence *before the trial court that entered the judgment of conviction* in his or her case to request resentencing” (§ 1170.18, subd. (a), italics added.) When jurisdiction over a case is transferred from the county of conviction to the county of defendant’s residence pursuant to section 1203.09, “[t]he court of the receiving county shall accept the entire jurisdiction over the case effective the date that the transferring court orders the transfer.” (§ 1203.9, subd. (b).)

In a case decided after the conclusion of briefing, the California Supreme Court resolved the split of authority in the Courts of Appeal over whether section 1203.09, subdivision (b) overrode the venue provision of section 1170.18, subdivision (a). Our high court held, “even in the case of a probationary transfer, the original sentencing court is the proper venue for a resentencing petition under section 1170.18.” (*People v. Adelman* (2018) 4 Cal.5th 1071, 1081.)

We asked for supplemental briefing on *Adelman*. Defendant concedes in her supplemental brief that *Adelman* controls. We agree. Applying *Adelman*, we conclude the trial court correctly denied the petition because it should have been filed in Amador County. However, since the law was not settled at the time defendant filed her petition, our affirmance is without prejudice to defendant filing a new petition in the correct venue, Amador County.

DISPOSITION

The judgment (order) is affirmed without prejudice to defendant filing a new petition in the appropriate venue, Amador County Superior Court.

RAYE, P. J.

We concur:

BLEASE, J.

BUTZ, J.